

*Of Counsel:*

Hope S. Foster\*

William A. Davis\*

MINTZ, LEVIN, COHN, FERRIS,

GLOVSKY AND POPEO, P.C.

701 Pennsylvania Ave, NW Suite 900

Washington, DC 20004

Tel: (202) 434-7303

Fax: (202) 434-7400

Kevin H. Marino

John A. Boyle

MARINO, TORTORELLA & BOYLE, P.C.

437 Southern Boulevard

Chatham, New Jersey 07928-1488

Tel: (973) 824-9300

Fax: (973) 824-8425

*Attorneys for Defendant*

*CVS Caremark Corporation*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA, ex rel.  
DAVID MORGAN,

Plaintiff,

v.

EXPRESS SCRIPTS, INC., et al.,

Defendants.

**Civil Action No. 05-01714 (DMC)(JAD)**

**Return Date: May 20, 2013**

**DEFENDANT CVS CAREMARK  
CORPORATION'S NOTICE OF  
MOTION TO DISMISS THIRD  
AMENDED COMPLAINT  
WITH PREJUDICE PURSUANT  
TO RULES 12(b)(6) AND 9(b)**

**ORAL ARGUMENT REQUESTED**

**Document Electronically filed**

TO: David S. Stone, Esq.  
Robert A. Magnanini, Esq.  
Stone & Magnanini LLP  
150 John F. Kennedy Parkway  
4<sup>th</sup> Floor  
Short Hills, NJ 07078

William L. Hurlock, Esq.  
Mueller Law LLC  
363 Bloomfield Avenue  
Suite 2-C  
Montclair, NJ 07042

PLEASE TAKE NOTICE that, pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b), on Monday, May 20, 2013 at 9:00 a.m., or on such other date and time as determined by the

---

\* *Pro hac vice* applications to be submitted to the Court.

Court, Defendant CVS Caremark Corporation (“Caremark”), through its attorneys, Marino, Tortorella & Boyle, P.C. (Kevin H. Marino, Esq., appearing) and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., will move before the Honorable Dennis M. Cavanaugh, U.S.D.J., United States District Court for the District of New Jersey, U.S. Post Office & Courthouse Building, Courtroom 4, Newark, New Jersey 07101, for entry of an Order dismissing Relator David Morgan’s Third Amended Complaint (the “Complaint”) with prejudice as to Caremark, for failure to state a claim upon which relief can be granted and for failure to plead fraud with particularity.

PLEASE TAKE FURTHER NOTICE that in support of this motion, Caremark will rely on the Memorandum of Law submitted herewith. A proposed form of Order is also submitted herewith.

PLEASE TAKE FURTHER NOTICE that Caremark respectfully requests oral argument on this motion.

Dated: April 16, 2013  
Chatham, New Jersey

Respectfully submitted,

BY: /s/ Kevin H. Marino  
Kevin H. Marino  
John A. Boyle  
MARINO, TORTORELLA & BOYLE, P.C.  
437 Southern Boulevard  
Chatham, New Jersey 07928-1488

Of Counsel:  
Hope S. Foster  
William A. Davis  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, P.C.  
701 Pennsylvania Ave, N.W. Suite 900  
Washington, DC 20004  
Tel: (202) 434-7303  
Fax: (202) 434-7400